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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

LANIAL DAVON BROWN,

Defendant and Appellant.

E050638

(Super.Ct.No. FSB901746)

OPINION

APPEAL from the Superior Court of San Bernardino County. Kyle S. Brodie,
Judge. Affirmed.

James M. Crawford, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

Defendant and appellant Lanial Davon Brown appeals from a guilty plea to one
felony count of burglary in violation of Penal Code section 459.¹ We affirm.

¹ All further statutory references are to the Penal Code.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant was charged with first degree residential burglary in violation of section 459. It was further alleged defendant had a prior conviction from March 11, 2009, for a serious felony (§ 667, subd. (a)(1)), carrying a loaded firearm while actively participating in a criminal street gang (§ 12031, subd. (a)(2)(C)), which qualified as a strike under sections 1170.12, subdivisions (a) through (d), and 667, subdivisions (b) through (i).

At a preliminary hearing, a police officer testified defendant was apprehended on April 27, 2009, after he was seen running through an apartment complex carrying a large flat screen television. A couple who lived nearby told police officers their apartment had been burglarized that morning, and one of them was able to identify two televisions taken from their residence during the burglary. One of these televisions was the one defendant was seen carrying.

On August 12, 2009, pursuant to a written agreement, defendant pled guilty to burglary and admitted the prior strike. Counsel stipulated to the preliminary hearing transcript as a factual basis for the plea. The court followed the plea agreement by sentencing defendant to a total of 11 years in state prison. To reach the total term, the trial court imposed the upper term of six years plus five years for the prior serious felony enhancement.

As part of the plea agreement, defendant was released pursuant to a *Vargas*² waiver. Under the *Vargas* waiver, defendant would be resentenced to two years in state prison and the prior strike would be dismissed if he did not violate any of the terms of his release and reappeared in court as directed. During the change of plea hearing, the court reviewed the *Vargas* waiver with defendant on the record to make sure he understood the terms. Defendant's counsel indicated on the record he advised defendant not to accept the plea agreement, but defendant had decided not to follow his advice.

On September 10, 2009, defendant failed to appear for resentencing. Thereafter, defendant was arrested and appeared before the court in custody on October 19, 2009.

On January 6, 2010, defendant filed a motion to withdraw his guilty plea claiming he was not adequately advised by counsel as to when he needed to return for resentencing in order to be in compliance with the terms of his *Vargas* waiver. On February 10, 2010, the court held an evidentiary hearing on the motion. Defendant testified at the hearing and acknowledged he signed the plea agreement and was advised by the court he would need to return for sentencing. However, he said he "wasn't for sure what day it was."

Defendant's counsel also testified at the hearing on defendant's motion to withdraw the plea agreement and stated he advised defendant not to accept the plea agreement. He also said he specifically reviewed the terms of the *Vargas* waiver with defendant and advised him he would need to return to court on September 10, 2009, for sentencing. In addition, the court reviewed the transcript of the change of plea hearing in

² *People v. Vargas* (1990) 223 Cal.App.3d 1107.

which defendant was advised he must return on September 10, 2009, in order to comply with the *Vargas* waiver. The trial court denied the motion to withdraw and found defendant's violation of the *Vargas* waiver was willful. As a result, the court said, "[T]he sentence of 11 years will remain in place."

DISCUSSION

Defendant filed a notice of appeal indicating he wished to challenge the sentence or other matters occurring after the plea, as well as the validity of his guilty plea. He requested and was granted a certificate of probable cause. In his request for a certificate of probable cause, defendant alleged he did not have sufficient notice of the date set for his return to court for sentencing under the *Vargas* waiver. He also indicated he wished to challenge the trial court's finding he willfully violated the terms of the *Vargas* waiver.

We appointed counsel to represent defendant on appeal. Appointed counsel on appeal has filed a brief under *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth the facts and procedural history, raising no specific issues, and requesting this court to conduct an independent review of the record. On June 29, 2010, we offered defendant an opportunity to file a personal supplemental brief, which he failed to do. We have now concluded our independent review of the record and find no arguable issues.

DISPOSITION

The judgment is affirmed.

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RAMIREZ
P. J.

We concur:

McKINSTER
J.

KING
J.